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INFORMATION SERVICES LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANDREW W. INGERSOLL,)
)
Plaintiff,)
)
vs.)
)
TRANS UNION CORPORATION,)
EQUIFAX INFORMATION SERVICES,)
LLC, EXPERIAN INFORMATION)
SOLUTIONS, INC.,)
)
Defendants.)

Case No. C 04 4986 SI

**DEFENDANT EQUIFAX
INFORMATION SERVICES LLC'S
ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S
FIRST AMENDED COMPLAINT
FOR DAMAGES AND INJUNCTIVE
RELIEF**

COMES NOW Defendant Equifax Information Services LLC ("Equifax"), through its undersigned counsel, and for its answer and affirmative defenses to Plaintiff's First Amended Complaint for Damages and Injunctive Relief, states as follows:

1. Equifax admits that Plaintiff brings this action for purported violations of Federal and California state statutes, but denies that it violated any statutes, denies that it engaged in unlawful business practices, denies that it is liable to Plaintiff, and denies that it caused any damage to Plaintiff or that he incurred the damages alleged in this paragraph.

1 2. Equifax is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in Paragraph 2 of Plaintiff's First Amended Complaint, but
3 denies that it violated any statutes, denies that it is liable to Plaintiff, and denies that it caused any
4 damage to Plaintiff or that the Plaintiff incurred any damages as a result of Equifax.

5 3. Responding to the allegations contained in Paragraph 3 of Plaintiff's First
6 Amended Complaint, Defendant Equifax admits that Plaintiff seeks compensatory damages,
7 attorney's fees and costs, in addition to penalties for the Defendants' alleged willful violations of
8 the FCRA and the CCRAA. Defendant Equifax denies that it violated the FCRA and/or the
9 CCRAA, denies that it is liable to Plaintiff, denies that it caused any damage to Plaintiff or that
10 he incurred the damages alleged in this paragraph, and denies that injunctive relief is an available
11 remedy under the FCRA.
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13 4. Equifax is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations contained in Paragraph 4 of Plaintiff's First Amended Complaint.
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16 5. Equifax is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations contained in Paragraph 5 of Plaintiff's First Amended Complaint.
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19 6. Equifax admits the allegations contained in Paragraph 6 of Plaintiff's First
20 Amended Complaint.
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22 7. Equifax is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations contained in Paragraph 7 of Plaintiff's First Amended Complaint.
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25 8. To the extent that Plaintiff can maintain a federal cause of action, which Equifax
26 denies, jurisdiction is proper in this Court.

27 9. Equifax denies the allegations contained in Paragraph 9 of Plaintiff's First
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Amended Complaint as they apply to Equifax.

10. To the extent that any acts or omissions took place in this venue, which Equifax denies, venue is proper in this Court.

11. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of Plaintiff's First Amended Complaint, and therefore denies them.

12. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of Plaintiff's First Amended Complaint, and therefore denies them.

13. Equifax denies the allegations contained in Paragraph 13 of Plaintiff's First Amended Complaint.

14. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of Plaintiff's First Amended Complaint.

15. Equifax denies that it reposted the fraudulent account. Equifax admits it sent Plaintiff a letter on April 4, 2003 reflecting that the Verizon account had been deleted. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 15 of Plaintiff's First Amended Complaint.

16. Equifax denies the allegations contained in Paragraph 16 of Plaintiff's First Amended Complaint as they apply to Equifax.

17. Equifax denies the allegations contained in Paragraph 17 of Plaintiff's First Amended Complaint as they apply to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 17

of Plaintiff's First Amended Complaint.

18. Equifax admits that Plaintiff contacted it by telephone on November 17, 2004. Equifax denies the remaining allegations contained in Paragraph 18 of Plaintiff's First Amended Complaint as they apply to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 18 of Plaintiff's First Amended Complaint.

19. Equifax denies the allegations contained in Paragraph 19 of Plaintiff's First Amended Complaint as they apply to Equifax.

20. Equifax denies the allegations contained in Paragraph 20 of Plaintiff's First Amended Complaint as they apply to Equifax.

21. Responding to the allegations contained in Paragraph 21 of Plaintiff's First Amended Complaint, Equifax reasserts and realleges its answers and responses set forth herein.

22. Responding to the allegations contained in Paragraph 22 of Plaintiff's First Amended Complaint, Equifax states that the terms and conditions of the FCRA speak for themselves.

23. Equifax denies the allegations contained in Paragraph 23 of Plaintiff's First Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 23 of Plaintiff's First Amended Complaint.

24. Equifax denies the allegations contained in Paragraph 24 of Plaintiff's First Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or

1 information sufficient to form a belief as to the truth of the remaining allegations contained in
2 Paragraph 24 of Plaintiff's First Amended Complaint.

3 25. Equifax denies the allegations contained in Paragraph 25 of Plaintiff's First
4 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
5 information sufficient to form a belief as to the truth of the remaining allegations contained in
6 Paragraph 25 of Plaintiff's First Amended Complaint.
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8 26. Equifax denies the allegations contained in Paragraph 26 of Plaintiff's First
9 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
10 information sufficient to form a belief as to the truth of the remaining allegations contained in
11 Paragraph 26 of Plaintiff's First Amended Complaint.
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13 27. Equifax denies the allegations contained in Paragraph 27 of Plaintiff's First
14 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
15 information sufficient to form a belief as to the truth of the remaining allegations contained in
16 Paragraph 27 of Plaintiff's First Amended Complaint.
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18 28. Equifax denies the allegations contained in Paragraph 28 of Plaintiff's First
19 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
20 information sufficient to form a belief as to the truth of the remaining allegations contained in
21 Paragraph 28 of Plaintiff's First Amended Complaint.
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23 29. Equifax denies that Plaintiff is entitled to judgment against it
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25 30. Responding to the allegations contained in Paragraph 30 of Plaintiff's First
26 Amended Complaint, Equifax reasserts and realleges its answers and responses set forth herein.
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1 31. Responding to the allegations contained in Paragraph 31 of Plaintiff's First
2 Amended Complaint, Equifax states that the terms and conditions of the CCRAA speak for
3 themselves.

4 32. Equifax denies the allegations contained in Paragraph 32 of Plaintiff's First
5 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
6 information sufficient to form a belief as to the truth of the remaining allegations contained in
7 Paragraph 32 of Plaintiff's First Amended Complaint.
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9 33. Equifax denies the allegations contained in Paragraph 33 of Plaintiff's First
10 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
11 information sufficient to form a belief as to the truth of the remaining allegations contained in
12 Paragraph 33 of Plaintiff's First Amended Complaint.
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14 34. Equifax denies the allegations contained in Paragraph 34 of Plaintiff's First
15 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
16 information sufficient to form a belief as to the truth of the remaining allegations contained in
17 Paragraph 34 of Plaintiff's First Amended Complaint.
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19 35. Defendant Equifax is without knowledge or information sufficient to form a belief
20 as to the truth of the allegations contained in Paragraph 35 of Plaintiff's First Amended
21 Complaint.
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23 36. Equifax denies the allegations contained in Paragraph 36 of Plaintiff's First
24 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
25 information sufficient to form a belief as to the truth of the remaining allegations contained in
26 Paragraph 36 of Plaintiff's First Amended Complaint.
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1 37. Equifax denies the allegations contained in Paragraph 37 of Plaintiff's First
2 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
3 information sufficient to form a belief as to the truth of the remaining allegations contained in
4 Paragraph 37 of Plaintiff's First Amended Complaint.

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6 38. Equifax denies the allegations contained in Paragraph 38 of Plaintiff's First
7 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
8 information sufficient to form a belief as to the truth of the remaining allegations contained in
9 Paragraph 38 of Plaintiff's First Amended Complaint.

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11 39. Equifax denies the allegations contained in Paragraph 39 of Plaintiff's First
12 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
13 information sufficient to form a belief as to the truth of the remaining allegations contained in
14 Paragraph 39 of Plaintiff's First Amended Complaint.

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16 40. Equifax denies that Plaintiff is entitled to judgment against it.

17 41. Responding to the allegations contained in Paragraph 41 of Plaintiff's First
18 Amended Complaint, Equifax reasserts and realleges its answers and responses set forth herein.

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20 42. Responding to the allegations contained in Paragraph 42 of Plaintiff's First
21 Amended Complaint, Equifax states that the terms and conditions of the California Business and
22 Professions Code speak for themselves.

23 43. Equifax denies the allegations contained in Paragraph 43 of Plaintiff's First
24 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
25 information sufficient to form a belief as to the truth of the remaining allegations contained in
26 Paragraph 43 of Plaintiff's First Amended Complaint.
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1 44. Equifax denies the allegations contained in Paragraph 44 of Plaintiff's First
2 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
3 information sufficient to form a belief as to the truth of the remaining allegations contained in
4 Paragraph 44 of Plaintiff's First Amended Complaint.

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6 45. Equifax denies the allegations contained in Paragraph 45 of Plaintiff's First
7 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
8 information sufficient to form a belief as to the truth of the remaining allegations contained in
9 Paragraph 45 of Plaintiff's First Amended Complaint.

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11 46. Equifax denies the allegations contained in Paragraph 46 of Plaintiff's First
12 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
13 information sufficient to form a belief as to the truth of the remaining allegations contained in
14 Paragraph 46 of Plaintiff's First Amended Complaint.

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16 47. Responding to the allegations contained in Paragraph 47 of Plaintiff's First
17 Amended Complaint, Equifax states that the terms and conditions of the California Business and
18 Professions Code speak for themselves.

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20 48. Equifax denies the allegations contained in Paragraph 48 of Plaintiff's First
21 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
22 information sufficient to form a belief as to the truth of the remaining allegations contained in
23 Paragraph 48 of Plaintiff's First Amended Complaint.

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25 49. Equifax denies that Plaintiff is entitled to any judgment against it.

26 50. Responding to the allegations contained in Paragraph 50 of Plaintiff's First
27 Amended Complaint, Equifax reasserts and realleges its answers and responses set forth herein.
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1 51. Equifax denies the allegations contained in Paragraph 51 of Plaintiff's First
2 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
3 information sufficient to form a belief as to the truth of the remaining allegations contained in
4 Paragraph 51 of Plaintiff's First Amended Complaint.

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6 52. Equifax denies the allegations contained in Paragraph 52 of Plaintiff's First
7 Amended Complaint as they apply to Equifax. Defendant Equifax is without knowledge or
8 information sufficient to form a belief as to the truth of the remaining allegations contained in
9 Paragraph 52 of Plaintiff's First Amended Complaint.

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11 53. Equifax denies the allegations contained in Paragraph 53 of Plaintiff's First
12 Amended Complaint.

13 54. Equifax admits that Plaintiff requests this Court enter a declaratory judgment, but
14 denies that it is liable to Plaintiff, and denies that it caused any damage to Plaintiff or that he
15 incurred any damages.

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17 55. Equifax denies that Plaintiff is entitled to judgment against it.

18 Equifax further denies that Plaintiff is entitled to any of the relief set forth in his prayer
19 for relief.
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3 Plaintiff's First Amended Complaint fails to state a claim against Equifax upon which
4 relief can be granted.

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Equifax has fully complied with the FCRA and is entitled to each and every defense and limitation of liability provided by the Act.

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Equifax asserts that it has complied with the CCRAA in all respects, and is entitled to
each and every defense and limitation of liability contained in the Act.

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5 Some or all of Plaintiff's claims against Equifax may be barred by the applicable statute
6 of limitations.

Plaintiff has not alleged any injury in fact.

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21 Plaintiff has not suffered any damages.

Equifax has acted in good faith and without malice or intent to injury Plaintiff.

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Plaintiff's claims are barred by his own contributory negligence.

NINTH AFFIRMATIVE DEFENSE

Equifax's alleged supplying of information, if any, was both privileged and justified.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were not caused by Equifax, but by another person or entity for whom or for which Equifax is not responsible.

ELEVENTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's claims are pre-empted by the Fair Credit Reporting Act, 15 U.S.C. § 1681h(e).

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate his damages.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claim for punitive damages is barred by the provisions of 15 U.S.C. §1681n.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's First Amended Complaint seeks the imposition of punitive damages. Equifax adopts by reference the defenses, criteria, limitations, standards and constitutional protections mandated or provided by the United States Supreme Court in the following cases: BMW v. Gore, 517 U.S. 559 (1996); Cooper Indus., Inc. v. Leatherman Tool Group, Inc., 532 U.S. 923 (2001) and State Farm v. Campbell, 538 U.S. 408 (2003).

FIFTEENTH AFFIRMATIVE DEFENSE

Injunctive relief is not available under the FCRA.

SIXTEENTH AFFIRMATIVE DEFENSE

Any allegation of the First Amended Complaint not expressly admitted is denied.

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SEVENTEENTH AFFIRMATIVE DEFENSE

Equifax reserves the right to have additional defenses that it learns of through the course of discovery.

WHEREFORE, having fully answered Plaintiff's First Amended Complaint, defendant Equifax Information Services LLC prays for judgment as follows:

(1) Plaintiff's First Amended Complaint be dismissed in its entirety and with prejudice, with costs taxed against Plaintiff;

(2) That Equifax be dismissed as a party to this action;

(3) That Equifax recover from Plaintiff its expenses of litigation, including attorneys' fees; and

(4) That Equifax recover such other and additional relief as the Court deems proper.

Dated: April _4, 2005

Respectfully submitted,

ERICKSEN, ARBUTHNOT, KILDUFF,
DAY & LINDSTROM, INC.

By: /s/
TERRY ALBERT FINCH
Attorneys for Defendant EQUIFAX
INFORMATION SERVICES LLC

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